

1 KAMALA D. HARRIS  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
4 State Bar No. 083047  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 324-5339  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2012-126

13 **TRACY CHOPPE BOYARSKY, AKA**  
14 **TRACY CHOPPE HART**  
1106 Mills Avenue  
Modesto, CA 95350  
Registered Nurse License No. 417536

**A C C U S A T I O N**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),  
21 Department of Consumer Affairs.

22 **Registered Nurse License**

23 2. On or about August 31, 1987, the Board issued Registered Nurse License  
24 Number 417536 to Tracy Choppe Boyarsky, also known as Tracy Choppe Hart ("Respondent").  
25 The registered nurse license was in full force and effect at all times relevant to the charges  
26 brought herein and will expire on November 30, 2012, unless renewed.

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## STATUTORY PROVISIONS

3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct...,

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

6. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

## COST RECOVERY

7. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Criminal Conviction)**

5 8. Respondent has subjected her license to discipline pursuant to Code section 2761,  
6 subdivision (f) in that Respondent has been convicted of the following crime, substantially related  
7 to the qualifications, functions, and duties of a registered nurse:

8 a. On or about September 30, 2008, in the Superior Court, North Division, Delano  
9 Branch, County of Kern, California, in the matter entitled *People vs. Tracy Choppe Boyarsky*,  
10 2008, Case No. DM076548A, Respondent was convicted following her plea of nolo contendere to  
11 a violation of Vehicle Code section 23152, subdivision (a) (driving while under the influence of  
12 alcohol), a misdemeanor. Respondent's blood alcohol level measured .27% for each of two tests.  
13 The circumstances of the crime are that on or about July 18, 2008, Respondent was arrested for  
14 driving under the influence of alcohol following a traffic stop. After the officer stopped the  
15 vehicle and approached Ms. Boyarsky, he observed an empty wine bottle on the floor behind the  
16 driver seat. The officer also observed Ms. Boyarsky to be unsteady on her feet.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Conviction of a Crime Involving Alcohol/Controlled Substances)**

19 9. Respondent has subjected her license to discipline pursuant to Code section 2761,  
20 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,  
21 subdivision (c), in that Respondent has been convicted of a crime involving the consumption of  
22 alcohol, as more particularly set forth in paragraph 8, above.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Use Alcohol to an Extent or in a Manner Dangerous or Injurious)**

25 10. Respondent has subjected her license to discipline pursuant to Code section 2761,  
26 subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762,  
27 subdivision (b), in that on or about July 18, 2008, Respondent used alcohol to an extent or in a  
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1 manner dangerous or injurious to herself or others, as more particularly set forth in paragraphs 8  
2 and 9, above.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
5 and that following the hearing, the Board of Registered Nursing issue a decision:

6 1. Revoking or suspending Registered Nurse License Number 417536, issued to Tracy  
7 Choppe Boyarsky, also known as Tracy Choppe Hart;

8 2. Ordering Tracy Choppe Boyarsky, also known as Tracy Choppe Hart to pay the  
9 Board of Registered Nursing the reasonable costs of the investigation and enforcement of this  
10 case, pursuant to Business and Professions Code section 125.3; and,

11 3. Taking such other and further action as deemed necessary and proper.  
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13

14 DATED: August 23, 2011

15 for Stacie Bern  
16 LOUISE R. BAILEY, M.ED., RN  
17 Executive Officer  
18 Board of Registered Nursing  
19 Department of Consumer Affairs  
20 State of California  
21 Complainant  
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